

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

RICHARD BITTLEMAN,

Petitioner,

V.

01-CV-1258

**A. ZON, Superintendent of Cape Vincent
Correctional Facility,**

**Kirk Zuelech, State Attorney for the 16th
Judicial Circuit of Florida,**

Respondents.

Thomas J. McAvoy, Senior U.S. District Judge

DECISION & ORDER

This *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 was referred to the Hon. Victor Bianchini, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.4.

No objections to the Report and Recommendation and Order dated April 6, 2007 have been filed. The Court notes that the Report and Recommendation sent by the Court Clerk to Petitioner's last know address at the Franklin County Jail, Malone, New York, was returned as "undeliverable." Magistrate Judge Bianchini's recommendation to dismiss the action is based, in part, on: (1) the fact that Petitioner is not presently in custody or under any supervision of the New York State Department of Corrections Services, see Rep.-Rec.

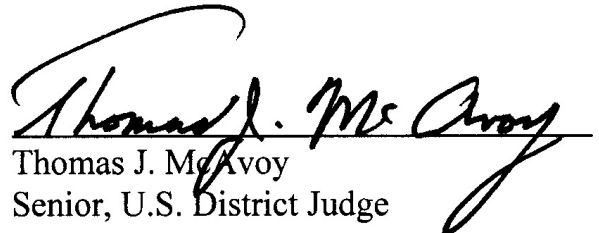
p. 6; and (2) that Petitioner's failure to keep the Court informed of his current address is a violation of Local Rule 10.1(b) and an independent basis to dismiss the action pursuant to Local Rule 41.2(b). Id. at p. 9. Thus, the fact that the Report and Recommendation was returned as undeliverable serves only to provide further support for Magistrate Judge Bianchini's recommendation. Furthermore, after examining the record, this Court has determined that the Report and Recommendation is not subject to attack for plain error or manifest injustice. Accordingly, this Court adopts the Report and Recommendation for the reasons stated therein.

It is therefore

ORDERED that the petition for a writ of habeas corpus is **DENIED** and **DISMISSED**. Further, the Court finds there is no substantial question presented for appellate review, and, therefore, a certificate of appealability is **DENIED**.

IT IS SO ORDERED.

Dated: August 4, 2007


Thomas J. McAvoy
Senior, U.S. District Judge